

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEB 26 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Review of the Commission's Broadcast and Cable Equal ) MM Docket No. 98-204  
 Equal Employment Opportunity Rules and Policies )

TO THE COMMISSION

**PARTIAL OPPOSITION TO ALASKA BROADCASTERS  
 ASSOCIATION ET AL. PETITION FOR RECONSIDERATION**

The EEO Supporters (listed in Annex 1 of EEO Supporters' Petition for Clarification or Reconsideration, filed February 6, 2003) respectfully oppose, in part, the Petition by the state broadcast associations in Alaska, Arkansas, Mississippi and New Mexico ("AKBA Petition"), which seeks partial reconsideration of Broadcast and Cable Equal Employment Opportunity Rules and Policies (Second Report and Order), 17 FCC Rcd 24018 (2002) ("Second R&O").<sup>1/</sup>

We do not oppose two of the four points in the AKBA Petition. Inclusion of the "exigent circumstances" exception in the rule would be reasonable. AKBA Petition at 3-4. We also do not oppose the allowance of a reasonable time, after the renewal filing date anniversary, for licensees to place the EEO Public File Report in the public file. See AKBA Petition at 4

**A. EEO Rules Are Necessary To Prevent Discrimination**

Petitioners urge that the EEO rules "are not necessary" because of "the absence of any evidence that broadcasters in general have discriminated against minorities and women in their recruitment and/or hiring practices." AKBA Petition at 2. However, the record contains ample evidence of massive discrimination by broadcasters, including a landmark Ford Foundation-supported study of industrywide intentional discrimination (the "Blumrosens Study").<sup>2/</sup> Written by leading scholars in the field and not disputed by any party, the Blumrosens Study

<sup>1/</sup> The views expressed herein are the institutional views of the commenting organizations, and are not intended to reflect the individual views of each of their officers, directors or members. The AKBA Petition does not appear on the FCC website and does not seem to be on a public notice. We just learned of it on February 23, 2003. Thus, if this opposition is either unripe or untimely, leave to file it and to have it considered is respectfully requested.

<sup>2/</sup> The Reality of Intentional Job Discrimination in Metropolitan America - 1999 by Alfred W. Blumrosen and Ruth G. Blumrosen (Rutgers University, 2002), discussed in the EEO Supporters October 1, 2002 Ex Parte Letter, pp. 12-17.

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concluded that 19% of cable and other pay-TV services discriminate intentionally against women, 36% against African Americans and 20% against Hispanics; and that 15% of broadcasters discriminate intentionally against women, 20% against African Americans and 24% against Hispanics.<sup>3/</sup> Several other statistical studies disclosed minority and female underrepresentation so extreme that discrimination, now or in the not-so-distant past, was the only reasonable explanation.<sup>4/</sup> Finally, a National Association of Minorities in Communications (NAMIC) study showed that minority professionals perceive extensive discrimination against themselves.<sup>5/</sup>

With this evidence before it, the Commission concluded that its rules continue to be necessary to prevent discrimination.<sup>6/</sup> Responding to the assertion that there was no “industrywide” discrimination, the Commission held that “it is not necessary to find that the broadcast industry ‘as a whole’ has engaged in discrimination in order to justify regulations to prevent discrimination. We do not suspect that the entire broadcast industry, or even most of it, engages in intentional or unintentional discrimination.”<sup>7/</sup> By recognizing that not “the entire” or “even most” of the industry discriminates, the Commission, with gracious understatement, has unmistakably found that some broadcasters discriminate. Petitioners offer nothing to suggest that this finding was unfaithful to the evidence in the record.<sup>8/</sup>

<sup>3/</sup> Blumrosens Study, pp. 204-205, reported in the EEO Supporters Ex Parte Letter, filed October 1, 2002.

<sup>4/</sup> See, e.g., Comments of EEO Supporters, filed April 15, 2002, pp. 37-40 and 47-49.

<sup>5/</sup> See Alisse Walerston et al., “A Look Toward Advancement: Minority Employment in Cable,” NAMIC Research and Policy Committee, August, 1999) (discussed in Comments of EEO Supporters, pp. 37-38 fn. 106-207) (a 1999 survey which disclosed that 20% of the NAMIC membership consistently perceive various forms of discrimination to occur at their companies, with 20% of minorities and 22% of women perceiving that their respective personal attributes have a negative impact on opportunities at their companies.)

<sup>6/</sup> Second R&O, 17 FCC Rcd at 24030 ¶¶57-58

<sup>7/</sup> Id., 17 FCC Rcd at 24039 ¶58 (fn. omitted)

<sup>8/</sup> We objected to the Commission’s suggestion that aggregate industrywide statistical disparities cannot “be equated with intentional discrimination.” EEO Supporters Petition for Clarification or Reconsideration, pp. 1-4 (discussing Second R&O, 17 FCC Rcd at 24039 ¶110). The AKBA Petition raises a different point, which is whether broadcasters even discriminated unintentionally

Furthermore, as the Commission found, “discrimination is so fundamentally inconsistent with the public interest that rules are justified to deter even the possibility of discrimination.”<sup>9/</sup> While some categories of wrongdoing might not justify preventive regulation, employment discrimination is special because its consequences are so serious that disqualification is required.<sup>10/</sup> Nondiscrimination, therefore, “is an essential component of every licensee’s obligation as a trustee of a valuable public resource.”<sup>11/</sup> Thus, the danger to the public from an outbreak of discrimination is ‘imply too great to risk the consequences of a resurgence. Like any other disease that has not yet been completely eradicated, the persistence of discrimination calls for ever-vigilant measures to protect the public health.

### **B. Broadcasters Should Report Recruitment Sources**

Petitioners object to the rules requiring that broadcasters report the recruitment sources that referred full time hires. **AKBA** Petition, p. 3. Quite properly, petitioners do not suggest that the rule is burdensome, since compliance with the rule requires almost no effort. To comply with this rule, a 20-employee station turning over its entire staff in a year would have to record twenty entries on a form -- requiring perhaps an hour of work. Balanced against this minimal effort is the usefulness of the information. This data informs the public -- and the broadcaster itself -- of whether the broadcaster is having success in employing people who entered the chain of employment from a variety of sources -- as would normally be the case over a long period of time for an equal opportunity employer. Referral source data certainly helps protect the public from broadcasters who send job announcements out ministerially, then disregard applicants sent to them from certain disfavored sources. This all-too-common practice is invidious even when disassociated with racial bias, but very often it is in fact indicative of unintentional or intentional discrimination. The Commission should afford discriminators no haven from accountability.

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<sup>9/</sup> Second R&O, 17 FCC Rcd at 24039 ¶58.

<sup>10/</sup> See, e.g., *Bilingual Bicultural Coalition on the Mass Media v. FCC*, 595 F.2d 621,628-29 (D.C. Cir. 1978).

<sup>11/</sup> *Id.* at 24036 ¶46.

The Commission expects broadcasters to “analyze the results of their recruitment efforts to ensure that they actually achieve broad outreach.”<sup>12/</sup> Experience has shown that many broadcasters, over time, come to value referral source information when conducting self-assessment. Yet it can hardly be said that all broadcasters will take this data seriously unless they are aware that the public is watching. For example, without the checks and balances of public accountability, last year 42% of broadcast job postings on state broadcast association websites omitted the “EOE” tags that formerly were ubiquitous. By January, 2003, after public exposure of this unseemly practice, the incidence of non-EOE job postings on **STBA** websites was cut in half, to 21%.<sup>13/</sup>

An industry engaged in journalism ought to know that the sunlight of public exposure and accountability is healthy for an industry whose diversity and competitiveness are essential to democracy

Respectfully submitted,

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<sup>12/</sup> Second R&O, 17 FCC Rcd at 24061 ¶134

<sup>13/</sup> See Reply Comments of EEO Supporters, filed May 29, 2002, pp. 28-31, finding that of 837 job postings on all 35 accessible state broadcast association (and **NASBA**) websites (visited 5/23-29/02), 34X (42%) did not contain EOE notices. Our followup review of the 43 accessible sites (visited 1/9 - 2/13/03) found that of 775 postings, 159 (21%) still did not contain EOE notices. Although this large a proportion is disturbing, public exposure evidently has cut the EOE noninclusion rate from 42% to 21% -- a good indication that FCC EEO enforcement will produce results.

**CERTIFICATE OF SERVICE**

I, David Honig, hereby certify that I have this 26th day of February, 2003 caused a copy of the foregoing "Partial Opposition to Alaska Broadcasters et al. Petition for Reconsideration" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

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